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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,780

09/17/2007

Patrick Blin

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EXAMINER

PERREAULT, ANDREW D

ART UNIT

PAPER NUMBER

3788

NOTIFICATION DATE

DELIVERY MODE

10/14/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

Office Action Summary	Application No. 10/599,780	Applicant(s) BLIN, PATRICK	
	Examiner ANDREW PERREAULT	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>08/04/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 10-29 stand.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huspeka et al. (5,699,959) in view of Negelen (6,250,542).

Re claim 10, Huspeka discloses a carton (figs 1-9) comprising an open top container (12 and in figs 7-9), a top closure (14 and in figs 7-9) connected to said open top container (12 and in figs 7-9) and at least one reinforced handle structure (12 fits onto 14 to form structure), said open top container and said top closure being formed from separate blanks respectively (separate in figs 1, 8, 9), wherein a first ply (top portion of 12 in fig 4; figs 8, 9) of said at least one reinforced handle structure is provided by said open top container (12; figs 8, 9), a second ply (inside portion of 50 in fig 5; figs 8, 9) of said at least one reinforced handle structure is provided by said top closure (14), and a third ply (portion at 46; figs 8, 9) of said at least one reinforced handle structure is provided by one of said top closure and said open top container (12; figs 8, 9); said first ply (top portion of 12 in fig 4; figs 8, 9) has a first handle aperture (at 42), said third ply (portion at 46; figs 8, 9) has a second handle aperture (aperture at 48

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in registry with 42; Merriam Webster defines "aperture" as an open space or a hole; by definition, it is not required that the aperture at 48 passes through the entire material, as it does at 42; for example, a hole in the ground does not pass through the entire portion of the ground, but by definition it is still a hole), and said first and second handle apertures are disposed in substantial registry to provide a single hand opening (as in figs 5, 8, 9); but does not disclose that the second handle aperture is on the second ply. Negelen discloses a similar device (figs 1-2) comprising a three ply structure with apertures (33) in registry at each ply (as shown in fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Huspeka in view of Negelen, including that the second handle aperture is on the second ply, to permit the entire ply structure, which is necessary for improved strength, to be used as a handle (Negelen col. 2: 23-59; fig 2). Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to rearrange the positioning of the apertures because it has been held that that rearranging parts of an invention on the basis of its suitability for the intended use was an obvious extension of the prior teachings. *Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) and it would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate apertures on the device because it has been held that the duplication of parts on the basis of its suitability for the intended use was an obvious extension of the prior teachings. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Re claim 11, Huspeka discloses that said top closure (14) comprises a hinged handle panel (at 50) for providing said second ply (inside portion of 50 in fig 5), said

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handle panel is secured in flat face contact with an inner face of said first ply of said at least one reinforced handle structure (contact in fig 5).

Re claim 12, Huspeka discloses that said third ply (portion at 46) of said at least one reinforced handle structure is secured in flat face contact with an outer face of said first ply (outer face of to portion of 12 in figs 4, 5).

Re claim 13, Huspeka discloses that said third ply (portion at 46) of said at least one reinforced handle structure is hinged to said second ply (inside portion of 50 in fig 5) of said at least one reinforced handle structure, and wherein a hinged connection (at 50) between said second ply and said third ply provides a means for aligning said top closure with said open top container (fig 5).

Re claim 14, Huspeka discloses that said first ply (top portion of 12 in fig 4) of said at least one reinforced handle structure is disposed between, and in face contacting relationship with, said second and third plies (fig 5).

Re claim 15, Huspeka discloses that said open top container (12; figs 8, 9) comprises a plurality of walls (walls of container in figs 8, 9), at least one of said walls of said open top container has a top flap (38) hingedly connected thereto and folded downwardly into said open top container (fig 4, 5, 9), wherein said top closure comprises an engaging tab (48; fig 9) for engaging said top flap such that said engaging tab is disposed in face contacting relationship with at least one of said at least one wall and said top flap (fig 9) to lock said top closure at a recessed position below a top of said open top container (connection between the top and container in fig 9 performs the intended use of locking).

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Re claims 16-18, which disclose the same features as claims 10-15, Huspeka in view of Negelen discloses a two-part blank for forming a carton (see claims 10-15 above), said blank comprising a first part for forming an open top container and a second part separate from said first part to form a top closure of said open top container, wherein said first and second part are provided with panels for forming at least one reinforced handle structure when the carton is erected, said at least one reinforced handle structure is of at least three ply construction, a first ply of said at least one reinforced handle structure is provided by said first part, a second ply of said at least one reinforced handle structure is provided by said second part, and a third ply of said at least one reinforced handle structure is provided by one of said first and second parts, said first ply has a first handle aperture, said second ply has a second handle aperture, and said first and second handle apertures, when the carton is erected, and disposed in substantial registry to provide a single hand opening; said first part comprises a plurality of walls, said first ply of said at least one reinforced handle structure being provided by one of said walls of said first part; said second part comprises at least one handle panel for providing said second ply of said at least one reinforced handle structure (see features in claims 10-15 above).

Re claim 19, Huspeka discloses that said third ply (portion at 46; figs 8, 9) has a cutout (cutout at 48 in registry with 42) which is disposed in substantial registry with said first and second handle apertures to provide said hand opening (as in fig 5). Furthermore, Negelen discloses a cutout with two apertures (cutouts and apertures at 33; see claim 10 above).

Re claim 20, Huspeka discloses that said top closure (14 and in figs 7-9) comprises a main panel (at 44) and a hinged handle panel (inside portion of 50 in fig 5; figs 8, 9) for providing said second ply (inside portion of 50 in fig 5; figs 8, 9), said handle panel extending upward from said main panel but does not disclose that said hand opening is positioned above said main panel. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the size of different portions of the device (which would position the opening of the main panel). A change in proportion is generally recognized as being within the level of ordinary skill in the art. In re Reese, 129 USPQ 402. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

2. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huspeka et al. (5,699,959) in view of Negelen (6,250,542) as applied to claim 20 above, and further in view of Galbierz et al. (5,845,776).

Re claims 21-24, Huspeka in view of Negelen discloses the claimed invention above for claim 20 with the exception of the following claimed limitations that are taught by Galbierz: a main panel (at 9) is provided with a plurality of receiving apertures (15) for receiving articles (such as B); each of said receiving apertures (15) is connected to at least another one of said receiving apertures (15) by a frangible connection (73A, 73B, 85, 83, 81 and frangible portions in figs 8-14); a plurality of bottles (B) having neck portions (necks in figs 5-7) that are received in said receiving openings respectively, said neck portions projecting outwardly of a carton through said receiving apertures and

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being disposed above said main panel (as in figs 5-7); wherein said receiving apertures (15) are sized such that each of said bottles cannot move out of the carton through a respective one of said receiving apertures without severing at least one of said frangible connections (the bottles are wider than 15; therefore connections must be severed as in fig 9 in order to remove B). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Huspeka in view of Negelen, and further in view of Galbierz, to provide a carrier to securely carry a plurality of bottles with a release so that the bottles can be easily removed (Galbierz col. 2:65 – col. 3: 25).

3. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huspeka et al. (5,699,959) in view of Negelen (6,250,542) as applied to claim 20 above, and further in view of Benner et al. (5,749,489).

Re claim 25, Huspeka in view of Negelen discloses the claimed invention above for claim 20 (including that Huspeka discloses said open top container is of a tubular structure having a cross section) with the exception of the following claimed limitations that are taught by Benner: substantially octagonal (shape in figs 1, 2; col. 3: 43-48). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shape of Huspeka in view of Negelen, and further in view of Benner because it has been held that a change in form or shape on the basis of its suitability for the intended use was an obvious extension of the prior teachings. *In re Dailey et al.*, 149 USPQ 47.

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4. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huspeka et al. (5,699,959) in view of Negelen (6,250,542) and Benner et al. (5,749,489) as applied to claim 25 above, and further in view of Galbierz et al. (5,845,776).

Re claims 26 and 27, Huspeka in view of Negelen and Benner discloses the claimed invention above for claim 25 (including that Benner discloses corner panels (panels 34a, 34c, 34e, 34, g); wherein a top closure further comprises comer tabs hingedly attached to a main panel (center panel in fig 4) such that said top closure fits securely into said tubular structure of the substantially octagonal cross section (as in fig 2) with the exception of the following claimed limitations that are taught by Galbierz: a plurality of bottles (B) received being arranged in multiple rows to form a bottle arrangement (as in figs 5-7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Huspeka in view of Negelen and Benner, and further in view of Galbierz, to provide a carrier to securely carry a plurality of bottles with a release so that the bottles can be easily removed (Galbierz col. 2:65 – col. 3: 25)

5. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huspeka et al. (5,699,959) in view of Galbierz et al. (5,845,776).

Re claim 28, Huspeka discloses a package comprising a carton (figs 1-9), the carton comprising an open top container (12 and in figs 7-9) and a top closure (14 and in figs 7-9) connected to said open top (12 and in fig 7-9), the open top container (12 and in figs 7-9) and said top closure (14 and in figs 7-9) being formed from separate

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blanks (separate in figs 1, 8, 9) respectively, wherein said top closure comprises a main panel (44) and a hinged panel (inside portion of 50 in fig 5; figs 8, 9), the hinged panel (inside portion of 50 in fig 5; figs 8, 9) being secured to the open top container such that the main panel is disposed at a recessed position below a top of the open top container (as in fig 2); but does not disclose a bottle group; the bottle group being formed of a plurality of bottles arranged in multiple rows, each of the bottles having a bottle neck; wherein the main panel is provided with a plurality of receiving apertures in which the bottle necks of said bottles are received such that the bottle necks project outwardly of the carton through the receiving apertures respectively, wherein each of the receiving apertures is connected to at least another one of the receiving apertures by a frangible connection, and wherein the receiving apertures are sized such that each of the bottles cannot move out of the carton through a respective one of the receiving apertures without severing at least one of said frangible connections. Galbierz discloses a similar device (figs 1-14) comprising a bottle group (bottle group at B); the bottle group being formed of a plurality of bottles arranged in multiple rows (as in figs 5-7), each of the bottles having a bottle neck (neck of B in figs 5-7); wherein a main panel (at 9) is provided with a plurality of receiving apertures (15) in which the bottle necks of said bottles are received such that the bottle necks project outwardly of a carton through the receiving apertures respectively (as in figs 5-7), wherein each of the receiving apertures (15) is connected to at least another one of the receiving apertures by a frangible connection (73A, 73B, 85, 83, 81 and frangible portions in figs 8-14), and wherein the receiving apertures (15) are sized such that each of the bottles cannot move out of the

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carton through a respective one of the receiving apertures without severing at least one of said frangible connections (the bottles are wider than 15; therefore connections must be severed as in fig 9 in order to remove B). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Huspeka in view of Galbierz, including a bottle group; the bottle group being formed of a plurality of bottles arranged in multiple rows, each of the bottles having a bottle neck; wherein the main panel is provided with a plurality of receiving apertures in which the bottle necks of said bottles are received such that the bottle necks project outwardly of the carton through the receiving apertures respectively, wherein each of the receiving apertures is connected to at least another one of the receiving apertures by a frangible connection, and wherein the receiving apertures are sized such that each of the bottles cannot move out of the carton through a respective one of the receiving apertures without severing at least one of said frangible connections, to provide a carrier to securely carry a plurality of bottles with a release so that the bottles can be easily removed (Galbierz col. 2:65 – col. 3: 25).

Re claim 28, Huspeka discloses that the carton further comprises at least one reinforced handle structure (as in figs 5, 8, 9) of a three-ply construction, wherein a first ply (top portion of 12 in fig 4; figs 8, 9) of the at least one reinforced handle structure is provided by the open top container (12 and in figs 7-9), a second ply (portion at 46; figs 8, 9) of the at least one reinforced handle structure is provided by the top closure (14 and in figs 7-9), a third ply (inside portion of 50 in fig 5; figs 8, 9) of the at least one reinforced handle structure is provided by one of the top closure and the open top

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container (14 and in figs 7-9), the first ply has a first handle aperture (at 42), the second ply (portion at 46; figs 8, 9) has a second handle aperture (aperture at 48 in registry with 42; Merriam Webster defines "aperture" as an open space or a hole; by definition, it is not required that the aperture at 48 passes through the entire material, as it does at 42; for example, a hole in the ground does not pass through the entire portion of the ground, but by definition, it is still a hole), and the first and second handle apertures are disposed in substantial registry to provide a single hand opening (as in figs 5, 8, 9).

Response to Arguments

Applicant's arguments with respect to the claims have been considered, but in view of the amendment the search has been updated, new prior art has been identified and a new rejection has been made.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW PERREAULT whose telephone number is (571)270-5427. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571)272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/A. P./

Examiner, Art Unit 3728

/Ehud Gartenberg/

Supervisory Patent Examiner, Art Unit 3728